IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

BOLLING PRESCRIPTION LAB, INC. d/b/a ROSELAND PHARMACY, an Illinois professional company, individually and as the representative of a class of similarly-situated persons,	)	
Plaintiff,	)	Case No. 17-cv-01485
v.	)	CLASS ACTION
ADELPHIA SUPPLY USA, INC., YUDAH NEUMAN, REUVEN SOBEL, and JOHN DOES 1-10,	)	
Defendants.	)	

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

Plaintiff, Bolling Prescription Lab, Inc. d/b/a Roseland Pharmacy ("Roseland" or "Plaintiff"), individually and on behalf of a class of similarly-situated persons, through its attorneys, and pursuant to Fed. R. Civ. P. 23, moves for entry of an order certifying the following class:

> Each person that was sent one or more telephone facsimile messages from "Adelphia Supply" after February 27, 2013 promoting the commercial availability of pharmaceuticals or medical supplies but not stating on its first page that the recipient may make a request to the sender not to send any future ads and that failure to comply with such a request within 30 days is unlawful.

1. Plaintiff files this motion soon after the filing of its Class Action Complaint in order to avoid an attempt by Defendant(s) to moot Plaintiff's individual claims in this class action. However, in this case, additional discovery is necessary for the court to determine whether to certify the class Plaintiff seeks to

represent. As a result, Plaintiff will seek leave to pursue class discovery as soon as practicable.

2. The prerequisites to class certification set out under Fed. R. Civ. P. 23(a) are met. Upon information and belief, the class is so numerous that joinder is not practicable. The claim of the Class Representative raises questions of law and fact common to and typical of the claims of each class member, and the Class Representative will fairly and adequately protect the interests of the members of the class. Since the expense and burden of individual litigation effectively makes it impossible for individual class members to seek redress for the wrongs alleged in the Class Action Complaint, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

3. The case involves common fact questions about Defendants' fax campaign and common legal questions under the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"), such as:

a. Whether Defendants sent facsimiles promoting the commercial availability or quality of property, goods, or services;

b. Whether Exhibit A-T and other yet-to-be-discovered facsimiles sent by or on behalf of Defendants are "advertisements" under the TCPA;

c. The manner and method Defendants used to compile or obtain the list(s) of fax numbers to which they sent the advertisements contained in Exhibits A-T and other similar fax advertisements;

d. Whether Defendants' fax advertisements contained opt-out notices compliant with the TCPA;

e. Whether the Court should award Plaintiff and the other class members statutory damages;

f. If it finds that Defendants willfully or knowingly violated the TCPA, whether the Court should exercise its discretion to increase the amount of the statutory damages award to an amount equal to not more than 3 times the amount;

g. Whether the Court should enjoin Defendants from faxing advertisements in the future; and

h. Whether Defendants' conduct as alleged herein constituted conversion.

4. Additionally, class certification is proper under Rule 23(b)(3), because questions of law or fact to Plaintiff's claim and the claims of each class member predominate over any question of law or fact affecting only individual class members, and class representation is superior to other methods for the fair and efficient adjudication of this controversy. In the alternative, class certification is proper under Rule 23(b)(1), because the prosecution of separate claims or defenses by or against individual members of the class would create a risk of adjudications concerning individual members of the class that would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the adjudication.

5. Plaintiff requests leave to submit a brief and other evidence in support of this motion after obtaining discovery regarding the class elements. This procedure comports with Fed. R. Civ. P. 23(c)(1)(A), which permits district courts to wait until "an early practicable time" before ruling on a motion to certify a class. *See also Damasco v. Clearwire Corp.*, 662 F.3d 891, 897 (7th Cir. 2011)("[A] court may abuse its discretion by not allowing for appropriate discovery before deciding whether to certify a class.") (overruled on other grounds by *Chapman v. First Index, Inc.*, __ F.3d __ 2015 WL 4652878 (7th Cir. Aug. 6, 2015)) (internal citations omitted); *Whiteamire Clinic v. Quill Corp.*, 2013 WL 5348377 at * 3 (N.D. Ill. Sept. 24, 2013) (Schenkier, J.) ("Moreover, the information plaintiff seeks in the contested first and second requests for production is clearly relevant to class discovery; specifically, to the issues of numerosity, commonality, and typicality.").

WHEREFORE, based upon the foregoing, Plaintiff respectfully requests that the Court certify this action as a class action pursuant to Fed. R. Civ. P. 23.

February 27, 2017

Respectfully submitted,

BOLLING PRESCRIPTION LAB, INC. d/b/a ROSELAND PHARMACY, an Illinois professional company, individually and as the representative of a class of similarly-situated persons,

By: /s/ Phillip A. Bock

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